

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Mark Acton, Vice Chairman; and
Robert G. Taub

Stamford Post Office
Stamford, Connecticut

Docket No. A2014-1

ORDER DISMISSING APPEAL WITHOUT PREJUDICE AND
REQUIRING PERIODIC STATUS REPORTS

(Issued January 28, 2014)

I. INTRODUCTION AND SUMMARY

On October 17, 2013, the Commission posted an appeal to its website filed on behalf of Kaysay Abrha (Petitioner) concerning the Postal Service's closure of the Stamford post office in Stamford, Connecticut.¹ The Petition included a request to suspend the closure pending the outcome of this appeal.

The central question raised by the Petitioner is whether, for purposes of 39 U.S.C. § 404(d)(5), the Stamford post office is closed. The Postal Service asserts that as of September 20, 2013, operations at the Stamford post office are under

¹ See Petition for Review and Application for Suspension: Closure of Stamford, Connecticut Downtown Historic Post Office on September 20, 2013, October 17, 2013 (Petition). The Petition is postmarked September 30, 2013.

emergency suspension. Petitioner characterizes the Postal Service's actions as a closure.

The future status of the Stamford post office remains uncertain. This has created confusion and concern in the community. Although the Postal Service's actions concerning the Stamford post office raise questions, the Commission concludes that the Postal Service must be given a short amount of time to determine how it will proceed with the Stamford post office and to determine how it will provide postal services to the Stamford community. Accordingly, Petitioner's request for review is dismissed without prejudice.

To avoid similar situations in communities where operations at the local post office have been suspended, the Postal Service should endeavor to inform patrons of the status of the office routinely. In addition, where the Postal Service plans a relocation of retail operations, the Postal Service should, to the extent feasible in managing its retail facilities' portfolio, announce the location and opening date of the new facility prior to taking any affirmative action to cease retail services at the existing facility.

To clarify the status of this post office, by no later than February 14, 2014, the Postal Service is directed to file a status report describing all steps that have been taken since September 20, 2013 to discontinue the Stamford post office, plans to conduct a new discontinuance study, plans to restore service at the facility, or secure suitable alternative quarters within the community.²

² Similar reports have been ordered by the Commission in previous proceedings. See, e.g., Docket No. A2012-126, Order No. 1347, Order Dismissing Appeal, May 11, 2012; and Docket No. A2012-127, Order No. 1581, Order Granting Motion to Dismiss and Requiring Status Report, December 17, 2012.

II. PROCEDURAL HISTORY

On October 23, 2013, the Commission established Docket No. A2014-1 to consider the appeal, issued a procedural schedule, and designated a Public Representative to represent the interests of the general public.³

On October 28, 2013, the Postal Service filed an answer to the request to suspend the closure pending the outcome of the appeal.⁴ The Postal Service included a motion to dismiss the proceeding with its answer. The Petitioner and the Public Representative filed responses to the Postal Service's motion to dismiss.⁵

On November 19, 2013, the Petitioner filed a brief in support of his appeal.⁶ On December 2, 2013, the Postal Service filed an answering brief.⁷ On December 17, 2013, the Petitioner filed a reply brief.⁸ Comments were received on behalf of the National Post Office Collaborate.⁹

III. BACKGROUND

The Stamford post office, located at 421 Atlantic Street, is classified as a station by the Postal Service. Retail operations at this location are currently under emergency suspension. The Stamford post office provided retail operations and service to 634 post office box customers. Postal Service Answer at 3. Post office box customers were

³ Order No. 1855, Notice and Order Accepting Appeal and Establishing Procedural Schedule, October 23, 2013.

⁴ United States Postal Service Answer in Opposition to Petitioner's Application for Suspension and Motion to Dismiss Proceedings, October 28, 2013 (Postal Service Answer).

⁵ Response of Kaysay H. Abrha in Opposition to United States Postal Service Motion to Dismiss Proceeding, November 15, 2013 (Abrha Response); Response of the Public Representative in Opposition to United States Postal Service Motion to Dismiss Proceeding, November 8, 2013 (PR Response).

⁶ Brief in Support of Petitioner's Appeal, November 19, 2013 (Petitioner Brief).

⁷ United States Postal Service Answering Brief, December 2, 2013 (Postal Service Brief).

⁸ Reply Brief of the Petitioner, December 17, 2013 (Petitioner Reply Brief).

⁹ Comments Received from the National Post Office Collaborate, October 23, 2013 (NPOC Comments).

informed they may retrieve their mail at the West Avenue station located 1.3 miles away.

Petitioner alleges that the Postal Service announced in an August 2010 public hearing its intent to relocate the Stamford post office. Petition at 4; Petitioner Brief at 1. In December 2012, the Postal Service entered into an agreement to sell the Stamford post office property with an anticipated closing date of September 2013. Postal Service Answer at 2. As the closing date drew near, the Postal Service had not yet secured a new facility to relocate operations within the Stamford community. Therefore, the Postal Service negotiated a 30-month lease agreement with the purchaser of the Stamford post office property, such that retail operation could continue at that location while the Postal Service secured a new location.

On September 4, 2013, the Postal Service conducted a safety inspection of the Stamford post office which revealed potential risks to the safety and health of employees. *Id.* at 3.

On September 18, 2013, the Postal Service issued a letter stating that it will vacate the Stamford post office as of September 20, 2013—“as the sale of our building advances.” *Abrha Response*, Exhibit A. This letter informed post office box customers that their mail may be retrieved at the West Avenue station, and that the number of available Post Office Boxes at the West Avenue station would be increased. It also provided customers with a list of alternative post office locations.

The Postal Service included a copy of its “Notice of Post Office Emergency Suspension” for the record. Postal Service Answer, Exhibit 4. This notice, signed October 1, 2013, indicates an effective date of suspension of September 20, 2013.

The Postal Service issued a second letter dated October 18, 2013, to clarify the status of the Stamford post office. It states “Due to severe deterioration of the facility, it was necessary to suspend services at the Atlantic Street Station at the close of

business on September 20, 2013.”¹⁰ It also provides further information on available mail services.

IV. CONTROLLING STATUTORY PROVISIONS

The Postal Service is required to “provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining.” 39 U.S.C. § 101(b). Congress specified that no post office may be closed solely for operating at a deficit, *id.*, and established a statutory procedure that the Postal Service must follow prior to closing or consolidating a post office.

Under the terms of 39 U.S.C. § 404(d)(1), prior to any decision as to the necessity for closing or consolidating any post office, the Postal Service must provide adequate notice so that persons served by the post office will have an opportunity to present their views. The law further requires the Postal Service to consider five enumerated factors in making a decision on whether to close a post office, the first of which is “the effect of such closing or consolidation on the community served by such post office.” 39 U.S.C. § 404(d)(2)(A). Any determination to close or consolidate shall be in writing and made available to persons served by such post office. 39 U.S.C. § 404(d)(3).

These statutory provisions establish a national policy that citizens should have the opportunity to convey their concerns to the Postal Service before their local post office is closed and, most important, that the Postal Service will fairly consider those concerns prior to making a decision to close that facility and will provide its reasoning, in writing, to persons served by that post office.

¹⁰ Postal Service Answer, Exhibit 1 (the Postal Service also asserts that the text of the October 18, 2013 letter was previously posted at the Atlantic Street post office October 11, 2013); *see also, id.* Exhibit 2.

V. PARTICIPANT PLEADINGS

Petitioner. In his appeal, Petitioner Abrha contends the Stamford post office was closed “without advanced planning or input from the public or the public meeting and notice to customer[s] required by postal regulations.” Petition at 1. He characterizes the Postal Service’s actions as a closure because a replacement postal office has not opened. *Id.* at 3. He alleges that the Postal Service has not followed its discontinuance procedures specified in 39 C.F.R. § 241.3, or the requirements of 39 U.S.C. § 404(d). *Id.* He further contends the Postal Service has violated the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA). *Id.* at 3-4.

Public Representative. The thrust of the Public Representative’s argument is that the Postal Service’s actions amount to a *de facto* discontinuance, as opposed to a suspension. PR Response at 2. She states that “the Postal Service has made it unequivocally clear it has no intention of resuming the Stamford Post Office.” *Id.* She suggests that the Commission require the Postal Service to follow the proper discontinuance process pursuant to 39 U.S.C. § 404(d). *Id.* at 6.

NPOC. NPOC contends the Postal Service did not provide 60 days’ notice, conduct public hearings, solicit meaningful public input, or consider the impact on the local community prior to closing the Stamford post office as required by 39 C.F.R. § 241.3. NPOC Comments at 2. Similarly, NPOC contends the Postal Service did not adhere to the statutory post office closing requirements provided by 39 U.S.C. § 404(d). Finally, NPOC argues that the Postal Service did not comply with postal regulations regarding NEPA and NHPA. *Id.*

Postal Service. The Postal Service explains that operations at the Stamford post office are suspended, and the facility has not undergone a formal discontinuance study. Postal Service Answer at 1, 5; Postal Service Brief at 4. It states that it has provided no indication that it is abandoning its plans to relocate operations from the Stamford post office. Postal Service Brief at 6. It further explains that its regulations allow 90 days from the date of emergency suspension to decide whether to take necessary corrective

action, or initiate a feasibility study. Postal Service Answer at 6. Therefore, the Postal Service argues that the appeal is premature. *Id.*

The Postal Service argues that the application for suspension of the final determination is also premature. *Id.* at 1. It states that a Final Determination has not been issued. Furthermore, the Postal Service contends that reopening the facility is not practical based on the safety inspection of the building. *Id.* at 8. The Postal Service notes that Stamford post office customers continue to have access to postal services through ten Postal Service-operated facilities within a five mile radius, along with 38 other alternate access locations. *Id.* at 9.

The Postal Service contends the allegations of NHPA and NEPA violations are improperly before the Commission because the Commission's responsibility does not include enforcing these provisions. Postal Service Brief at 3.

Finally, the Postal Service explains that the Stamford facility is a station, and not a post office. The Postal Service position is that 39 U.S.C. § 404(d) does not apply to stations or branches. Postal Service Answer at 9-10; Postal Service Brief at 4. Therefore, the Postal Service contends that the Commission lacks subject matter jurisdiction to hear the appeal. *Id.*

VI. COMMISSION ANALYSIS

Since September 20, 2013, retail operations, including post office box service, have not been available at the Stamford post office. The parties disagree over whether this action constitutes a suspension or closure. While there is a commercial component to this dispute, the conflicting characterizations are due to what, on this record, appears to be an abrupt decision to stop providing retail services at the Stamford post office.

The salient facts are as follows. As part of an agreement to sell the Stamford post office, the Postal Service executed a 30-month leaseback of the facility, one it has occupied for many years.¹¹ A subsequent inspection of the premises, conducted

¹¹ The record does not indicate when the 30-month leaseback was executed.

September 4, 2013, revealed “many potential risks to the safety and health of the employees such as lead paint, plaster falling off the wall, no running water.” Postal Service Answer at 3. Certainly, customers’ and employees’ wellbeing is of paramount concern. Nonetheless, the facility served as a post office for many years. In light of that, the cessation of retail services on September 20, 2013 may appear to be precipitous.

Furthermore, the discrepancy between the two notices posted by the Postal Service about the cessation of retail services at the Stamford post office has caused confusion. The first posted September 18, 2013, does not mention suspension, but indicates that the Postal Service had “not yet found a permanent new location.” Petitioner Brief, Attachment. The second, posted October 18, 2013 “clarif[ied] the status” of the Stamford post office, indicating that operations were suspended “[d]ue to severe deterioration of the facility.” Postal Service Answer Exhibit 1.

Based on the pleadings, it is clear that retail services are not currently available from the Stamford post office. However, whether that facility will be permanently closed is unknown at this time. As noted, the Postal Service had executed a 30-month leaseback agreement with the prospective buyer. Furthermore, in pleadings, the Postal Service indicates “that it was [not] abandoning its plans to relocate operations from the Atlantic Street Station” Postal Service Brief at 6.

The pleadings also demonstrate that the Postal Service has not effectively communicated its intentions regarding the Stamford post office (or possible relocation) to its customers. The inconsistent communications have left the Stamford community, without answers as to the future provision of mail service to the community.

The Postal Service states that “[u]nder existing regulations, the Postal Service has 90 days from the date of emergency suspension to decide whether to take necessary corrective action, or initiate a feasibility study.” Postal Service Answer at 5-6. The 90 days expired on December 19, 2013.

The statute permits the Postal Service to discontinue operations at post offices. Suspensions may, on occasion, be inevitable. The Postal Service has adopted

procedures to address this very situation, and it is obligated to follow them to discontinue operations or reopen the facility.

Handbook PO-101 provides that:

[A] decision should be made within 90 days of an emergency suspension to secure alternate quarters, take necessary corrective action, or initiate a feasibility study. (section 617; see *also* section 212.21).

If the district manager determines not to initiate a discontinuance study, the district manager must determine a plan of action to restore service, secure suitable alternate quarters, or take other necessary corrective action. That plan of action must be provided to the vice president, Delivery and Post Office Operations, no later than the 90 days after suspension takes effect. (section 618).¹²

It is incumbent on the Postal Service to move forward as quickly as practicable to resolve the status of suspended offices, such as Stamford. Residents in affected communities are entitled to be kept informed.

To clarify the status of the Stamford post office, by no later than February 14, 2014, the Postal Service is directed to file a detailed status report describing all steps that have been taken since September 20, 2013 to discontinue the Stamford post office, plans to conduct a new discontinuance study, plans to restore service at the facility, or secure suitable alternative quarters within the community.

Application for suspension of determination. The Petitioner has asked the Commission to suspend the Postal Service decision to close the Stamford post office pending the outcome of this appeal. Petition at 4. The Postal Service states the Stamford post office is under emergency suspension due to issues reported in a recent safety inspection. Postal Service Answer at 3.

¹² See Docket No. N2012-1, USPS-LR-N2012-2/5 - United States Postal Service Handbook PO-101 (January 2012).

Based on the record, it is clear that the facility has not undergone a formal discontinuance study, and no administrative record exists that can be filed with this appeal. See Postal Service Answer at 1. Consequently, the relief Petitioner requests is not available under section 404(d)(5). Pursuant to its regulations, the Postal Service must decide, in the near term, whether to repair and reopen the facility, find a replacement facility, or comply with the requirements of 39 U.S.C. § 404(d).

National Historic Preservation Act (NHPA) and National Environmental Policy Act (NEPA). Petitioner and NPOC argue that the Postal Service did not comply with Postal Service regulations concerning NEPA and NHPA. Petition at 3-4; NPOC Comments at 2. The Postal Service argues that alleged NHPA and NEPA violations are not a matter for the Commission to consider upon an appeal of a post office closing. Postal Service Brief at 3.

The Commission has repeatedly stated “[t]he Commission’s role in appeals under section 404(d)(5) does not include responsibility for enforcing the NHPA.”¹³ Likewise, the Commission does not have a role in enforcing NEPA requirements.

Jurisdiction to hear appeal. The Postal Service argues the Commission lacks subject matter jurisdiction because 39 U.S.C. § 404(d) applies only to post offices, not to stations or branches such as the Stamford post office. Postal Service Answer at 9-10; Postal Service Brief at 4.

¹³ Docket No. A2011-49, Order No. 1037, Order Affirming Determination, December 12, 2011 (Village Station, Pinehurst, North Carolina) at 8 n.17; Docket No. A2013-1, Order No. 1588, Order Granting Motion To Dismiss, December 19, 2012 (Santa Monica Post Office, Santa Monica, California) at 5 n.9; Docket No. A2013-6, Order No. 1802, Order Granting Motion to Dismiss, August 8, 2013, (Bronx General Post Office, Bronx, New York) at 5 n.5.

The Commission has repeatedly held that 39 U.S.C. § 404(d) provides appeal rights to persons served by post offices that are labeled for administrative purposes as stations or branches.¹⁴

VII. ORDERING PARAGRAPHS

It is ordered:

1. The Postal Service's Motion to Dismiss Proceedings, filed October 28, 2013, is granted.
2. The Petition for Review, postmarked September 30, 2013, is dismissed without prejudice.
3. The Postal Service shall file by no later than February 14, 2014, a detailed status report concerning the Stamford post office as set forth in the body of this Order.

By the Commission.

Shoshana M. Grove
Secretary

¹⁴ See, e.g., Docket No. A82-10, Order No. 436, *In re Oceana Station, Virginia Beach, Virginia*, June 25, 1982, at 4 (*Oceana Station*); Docket No. A2006-1, Order No. 1480, *In re Observatory Finance Station Pittsburg, PA 15214-0651*, September 29, 2006, at 6-12; Docket No. A2011-16, Order No. 748, *Akron-East Station, Akron, Ohio*, June 17, 2011, at 2; Docket No. A2011-18, Order No. 865, *Order Affirming Determination, Valley Falls Station, Cumberland, Rhode Island*, September 20, 2011; Docket No. A2011-49, Order No. 1037, *Order Affirming Determination, Village Station, Pinehurst, North Carolina*, December 12, 2011; and Docket No. A2012-108, Order No. 1317, *Order Remanding Determination, South Valley Station, Yerington, Nevada*, April 18, 2012.